

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Hawaiian Telecom, Inc. for Waiver)	WC Docket No. 08-4
of Sections 54.309 and 54.313(d)(vi) of the)	
Commission's Rules)	
)	

COMMENTS OF PUERTO RICO TELEPHONE COMPANY, INC.

Puerto Rico Telephone Company, Inc. ("PRT") respectfully submits these comments regarding the petition of Hawaiian Telecom, Inc. ("HT") for waiver of Sections 54.309 and 54.313(d)(iv) of the Commission's rules. Regardless of whether HT has satisfied the requirements for obtaining the waivers it seeks, the Commission should not grant the requested high-cost universal service support to Hawaii until after the Commission has established an interim non-rural insular support mechanism for which Puerto Rico and PRT have been waiting for more than a decade.

Although HT attempts to portray Hawaii as a singularly unique circumstance that justifies special universal service funding, PRT faces similar challenges in Puerto Rico and is no less deserving of federal universal service support. In fact, PRT faces unique challenges not confronted by HT in Hawaii—challenges that prompted the Commission to tentatively conclude that it "should establish a new interim support mechanism for non-rural insular areas," such as Puerto Rico.¹ Thus, neither HT's petition nor comprehensive universal service reform should

¹ *Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Notice of Proposed Rulemaking, 20 FCC Rcd 19731, 19746 (2005) ("*Universal Service NPRM*").

obscure the continuing need for the Commission to establish a non-rural insular support mechanism, and any high-cost universal service subsidies to which HT may be entitled should wait until after that mechanism has been established.

HT's petition is premised upon the fact that the company receives no high cost universal service funding today, "despite the high costs of service in the vast majority of Hawaii, the vital need for support to modernize HT's telecommunications infrastructure, and the increasing service demands of HT's customers." Petition at 4-5. HT's petition describes the "multitude of geologic, topographic, demographic, and economic factors" that HT claims warrant a waiver of the Commission's rules so as to permit HT to receive high cost universal service support. *Id.* at 6. According to HT, Hawaii "has fallen through a proverbial crack in the universal service system," which HT asks the Commission to "help to repair" *Id.* at 16.

Whatever "crack" in the universal service system into which Hawaii may have fallen, it pales in comparison to the crevasse in which Puerto Rico currently finds itself. Like Hawaii, Puerto Rico presents serious geographic challenges to the provision of telecommunications service that are not faced on the mainland. As an insular area, Puerto Rico is separated from the rest of the United States by miles of ocean, which creates significant shipping-related costs because everything necessary for creating and maintaining a telecommunications infrastructure must be brought to the island at considerable expense, including supplies and equipment as well as technicians and other support personnel.²

² See Letter from Miguel Reyes Davila, President, Telecommunications Regulatory Board of Puerto Rico ("TRB"), to Kevin J. Martin, Chairman, FCC, CC Docket No. 96-45, at 1 (Apr. 15, 2005) ("*TRB Letter*"); see also Comments of the Public Service Commission of the United States Virgin Islands, CC Docket No. 96-45, at 3-4 (Dec. 17, 1999) ("*VIPSC Comments*"); Comments of the Government of Guam, CC Docket No. 96-45, at 3 (Dec. 17, 1999).

Like Hawaii, the topography of Puerto Rico contributes to the increased cost of providing service. Puerto Rico's sparsely populated rural interior consists of mountainous or hilly terrain and heavy tropical vegetation, which results in "telecommunications transmission facilities requir[ing] additional guying and anchoring and the distances between points [being] increased."³ As a result, PRT must surmount considerable physical obstacles, at substantial cost, to install and maintain facilities in this terrain, which explains why PRT's installation costs per local loop in these areas range from \$5,000 to more than \$15,000 in some instances.⁴

Like Hawaii, the climate of Puerto Rico further drives up PRT's cost of service. PRT faces the same climate challenges as confront HT, including salt air and water, which are "corrosive and inhospitable to telecommunications equipment" leading to accelerated deterioration of equipment,⁵ as well as severe tropical weather requiring frequent reconstruction of existing infrastructure due to storm and hurricane damage.⁶

But unlike Hawaii, Puerto Rico has unique economic challenges not faced by HT or telecommunications providers on the mainland. For example, consumers in Puerto Rico experience a disproportionately high cost of living that can be seen in the increased cost of basic

³ See *VIPSC Comments* at 4; see also *Comments of Puerto Rico Telephone Company, Inc.*, CC Docket No. 96-45, at 6-7 (Dec. 17, 1999) ("*PRT Underserved Comments*").

⁴ *PRT Underserved Comments* at 7.

⁵ *VIPSC Comments* at 4.

⁶ See *Federal-State Joint Board on Universal Service*, Order, FCC 05-178, ¶ 2 (Oct. 14, 2005); *PRT Underserved Comments* at 7-8. For example, in 1999, Hurricane George caused more than \$80 million in damages to PRT facilities. In 2004, Hurricane Jeanne caused \$9.2 million in damage. See, e.g., Letter from Nancy J. Victory, Counsel for PRT, to Jeffrey Carlisle, Chief, Wireline Competition Bureau, CC Docket No. 96-45, at 2 (Mar. 28, 2005); Petition for Clarification and/or Reconsideration of the Puerto Rico Telephone Company, Inc., CC Docket No. 96-45, at 9 n.19 (Jan. 14, 2004).

commodities and consumer goods as compared to the mainland.⁷ The cost of living index for Puerto Rico is 133.8, more than 30 points higher than the U.S. national average cost of living.⁸ At the same time, consumer income in Puerto Rico is markedly lower than on the mainland or in Hawaii. The median household income of Puerto Rico is slightly more than half of that of the poorest U.S. state and just more than a quarter of that of Hawaii.⁹ Indeed, nearly half of Puerto Rico's residents live below the poverty line.¹⁰ The relative poverty of Puerto Rico as compared to the mainland and Hawaii is evident through an analysis of the number of low-income Lifeline customers compared to the total number of residential lines in a state: Puerto Rico's proportion of Lifeline lines (9.3 percent) is almost double the national average (4.5 percent), and almost nine times that of Hawaii (1.1 percent).¹¹

⁷ See Estudios Tecnicos Inc., *Economic Conditions: Puerto Rico and the United States*, at 2 (Jan. 31, 2006) (noting that basic commodities such as electricity cost 70 percent more in Puerto Rico than on the mainland, while basic consumer goods such as a Honda Pilot cost 20 percent more than in the United States).

⁸ *PRT Underserved Comments* at 10; *PRT White Paper: Proposed Interim Insular Mechanism*, CC Docket No. 96-45, at 18 (May 6, 2005).

⁹ Based on 2006 data, the median household income of the United States is \$48,451. Puerto Rico has a median household income of \$17,621, or slightly more than half the income level of the poorest state, Mississippi (\$34,473), and just more than a quarter the income level of Hawaii (\$61,160), which ranks fourth in the nation. U.S. Census Bureau, 2006 American Community Survey, available at http://factfinder.census.gov/servlet/DatasetMainPageServlet?_program=ACS&_submenuId=&_lang=en&_ts=.

¹⁰ *Id.*

¹¹ FCC, Wireline Comp. Bur., Indus. & Analysis Div., *Trends in Telephone Service*, at 7-5, 19-13 (Tables 7.2, 19.9) (rel. Feb. 9, 2007) ("*Trends in Telephone Service*") (finding that 9.3 percent of total access lines in Puerto Rico are Lifeline lines (108,022 out of 1,158,243 total lines) compared to 4.5 percent of lines nationwide (7,119,506 out of 157,041,487 total lines) and 1.1 percent of lines in Hawaii (6,882 out of 632,638)). Note that these statistics include actual Lifeline customers, which is fewer than the number of eligible Lifeline customers. In all, the FCC has estimated nationally that only one-third of households eligible for Lifeline/Link-Up assistance actually enroll. *Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, ¶ 1 (2004).

The combination of low per-capita income and a dramatically higher cost of living results in significantly less disposable income for residents of Puerto Rico. This fact bears directly on the ability of PRT to raise rates to fund network improvements and to deploy broadband services and also negatively affects the ability of state commissions serving insular areas to establish robust state universal service programs.

In light of these geographic, climatic, and economic challenges, the wireline penetration rate in Puerto Rico remains relatively low in comparison to the mainland and Hawaii. The nationwide penetration rate is currently 95 percent, whereas the Commission's most recent data reflects that the wireline penetration rate in Puerto Rico is less than 74 percent.¹² On a state-by-state basis, no state has a penetration rate below 90 percent—Alabama is the lowest at 90.7 percent and Hawaii is above the nationwide rate at 96.9 percent.¹³ At one time, wireline penetration rates in Puerto Rico jumped from approximately 25 percent in the mid-1970s to over 76 percent in 1977, but that occurred with significant universal service funding.¹⁴

None of this is intended to begrudge HT any high-cost universal service support to which it may be entitled. However, the challenges HT faces in its service territory are not unique, nor is Hawaii in the same dire straits in which Puerto Rico finds itself. In fact, the challenging circumstances facing insular areas such as Puerto Rico prompted Congress to direct the

¹² *Telephone Subscribership in the United States*, Industry Analysis and Technology Division, Wireline Competition Bureau, at 8 (Table 2) (February 2008) (“*Telephone Subscribership Report*”); *Trends in Telephone Service* at 16-6 (Table 16.4). This disparity is made starker by the fact that the national penetration rate exceeded 70 percent in the 1960s. *Trends in Telephone Service* at 16-4 (Table 16.2) (noting that the percentage of households with telephones increased from 61.8 percent to 78.3 percent from 1950 to 1960).

¹³ *Telephone Subscribership Report* at 8 (Table 2).

¹⁴ *TRB Letter* at 1-2.

Commission to establish universal service policies regarding consumers in “insular” areas.¹⁵

Consistent with the Congressional mandate, the Commission repeatedly has affirmed the need for insular-specific universal service solutions.

In its First Recommended Decision, the Federal-State Joint Board on Universal Service (“Joint Board”) stressed its obligation “to consider consumers of insular areas . . . when developing support mechanisms for consumer access to telecommunications and information services.”¹⁶ The Joint Board further “recognize[d] the special circumstances faced by carriers and consumers in the insular areas of the United States,” pointing specifically to the increased costs of shipping and annual damage from tropical storms.¹⁷ In the *First Report and Order*, the FCC also acknowledged the formidable challenges facing insular areas: “insular areas generally have subscribership levels that are lower than the national average, largely as a result of income disparity, compounded by the unique challenges these areas face by virtue of their locations.”¹⁸ In light of those conditions, the FCC pledged to “examine ways to improve subscribership in . . . areas” where penetration rates were “particularly low,” specifically citing Puerto Rico.¹⁹

In 1999, the FCC opened a new proceeding to examine areas with low penetration rates, particularly insular areas and tribal lands. In that proceeding, the agency noted that “[t]elephone penetration rates among low-income consumers, and in insular, high-cost, and tribal lands lag

¹⁵ 47 U.S.C. § 254(b)(3).

¹⁶ *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, ¶ 430 (1996).

¹⁷ *Id.*, ¶ 434.

¹⁸ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶¶ 112, 314, 414 (1997).

¹⁹ *Id.*, ¶ 415.

behind the penetration rates in the rest of the country.”²⁰ The FCC further found that “subscriberhip levels are below the national average in ... certain insular areas.”²¹ The FCC again pledged to “continue to examine and address the causes of low subscriberhip in other areas and among other populations, especially among low-income individuals in ... insular areas.”²²

In November 2004, three Commissioners expressed their unequivocal support for the creation of a distinct insular universal service support mechanism. Specifically, FCC Chairman (then Commissioner) Kevin Martin urged immediate action to provide insular areas with actual cost-based universal service support because “[t]he record demonstrates the unique challenges facing insular areas, such as Puerto Rico.”²³ Commissioner Michael Copps agreed that the Commission was “long past due to address [the insular] aspect of the [Telecommunications Act] and incorporate this concept in [the] universal service support system.”²⁴ Commissioner Jonathan Adelstein also noted that he hoped that the Commission would move forward “expeditiously” in its consideration of the “sufficiency of support for carriers in insular areas.”²⁵

²⁰ *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177, ¶ 5 (1999).

²¹ *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, ¶ 32 (2000).

²² *Id.*, ¶ 11.

²³ *Federal-State Joint Board on Universal Service*, Order on Reconsideration, 19 FCC Rcd 23824, 23847 (2004) (Dissenting Statement of Comm’r Kevin J. Martin).

²⁴ *Id.* at 23846 (Concurring Statement of Comm’r Michael J. Copps).

²⁵ *Id.* at 23848 (Concurring Statement of Comm’r Jonathan S. Adelstein).

In a notice of proposed rulemaking released in December 2005, the Commission acknowledged that it “could be doing more to help the residents of Puerto Rico” and tentatively concluded that it “should establish a new interim support mechanism for non-rural insular areas,” such as Puerto Rico.²⁶ The Commission agreed, as an initial matter, that “Congress intended that consumers in insular areas ... have access to affordable telecommunications and information services.”²⁷ It then concluded that “the low penetration rates in Puerto Rico demonstrate that this goal is not being met” and recognized that “the unique challenges in providing telephone service in Puerto Rico” require “a special support mechanism.”²⁸ The Commission explained that the “newly available universal service funds will enable PRT[] to construct new network and loop infrastructure to unserved areas, update its existing facilities, improve quality of service, maintain affordable rates, and educate and solicit potential first-time telephone customers.”²⁹

It is now 2008, and Puerto Rico and PRT continue to wait for the establishment of a non-rural insular support mechanism. Although PRT recognizes the challenges facing the Commission in reforming the universal service system and appreciates HT’s desire to receive high-cost support, neither should come at the expense of addressing the needs of insular areas such as Puerto Rico. Until the Commission does so, the residents of Puerto Rico will not “receive the benefit of modern telecommunications infrastructure, affordable telecommunications service, and greater availability of broadband” that HT seeks to bring to Hawaii. Petition at 16. The residents of Puerto Rico are no less deserving of these benefits, face very similar (and even additional) challenges as residents in Hawaii, and have long since been

²⁶ *Universal Service NPRM* at 19746.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

waiting for the Commission to fulfill a pledge to “do[] more” for Puerto Rico. Accordingly, consistent with Congress’s directive and Commission precedent, the Commission should promptly establish a non-rural insular support mechanism and should defer granting HT’s waiver petition until it has done so.

Respectfully submitted,

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February 19, 2008